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ALAN WAXLER and RAYMOND CHENOWETH

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRANK COHN, individually and on behalf
of a class of all similarly situated persons,

Plaintiff,

vs.

RITZ TRANSPORTATION, INC., AWG
AMBASSADOR, LLC, ALAN WAXLER
and RAYMOND CHENOWETH,

Defendants.

CASE NO. 2:11-CV-1832-JCM-NJK

**JOINT MOTION FOR
APPROVAL OF CONFIDENTIAL
SETTLEMENT AGREEMENT AND
RELEASE OF ALL CLAIMS AND FOR
DISMISSAL WITH PREJUDICE**

Plaintiff FRANK COHN ("Named Plaintiff"), on behalf of himself and opt in Plaintiffs
NICOLE ANTHONY, RANDALL BORCHERS, ROSS BRADY, DWIGHT CANYON, DAVID
DANIELS, JAMES DUERR, FRANK FERRINO, LIONEL FORSTALL, DAVID
LANDSDOWNE, KEVIN NASH, ARTHUR PARKER, GRACIELA PEREZ, NIKOLA RADEV,
WILLIAM SIMMONS, SHAWN THOMPSON, DANNY UMLAND, JAMES WILSON,
RAYMOND WRIGHT, GARY CHAVEZ, ORLANDO GREEN, ROBERTO MAGLAYA JR.,
PETER MILLER, LEIDOLF SYSTAD(collectively "Opt-in Plaintiffs") (Named Plaintiff and Opt-in
Plaintiffs shall be referred to collectively as "Plaintiffs") and Defendants RITZ
TRANSPORTATION, INC., AWG AMBASSADOR, LLC, ALAN WAXLER and RAYMOND
CHENOWETH ("Defendants") (Plaintiffs and Defendants shall be referred to collectively as the

1 “Parties”), by their undersigned counsel, respectfully move this Court for review and approval of the
 2 Parties’ “Confidential Settlement Agreement and Release of All Claims” and, if approved by this
 3 Court, for a dismissal with prejudice of this lawsuit Plaintiffs. As grounds for this Joint Motion, the
 4 Parties show the Court as follows:

5 1. Plaintiff Cohn filed the above-captioned lawsuit in the Eighth Judicial District Court
 6 in Clark County, Nevada on October 26, 2011, claiming Defendants did not pay Plaintiff Cohn and
 7 other “similarly situated persons,” overtime wages in violation of the Fair Labor Standards Act, 29
 8 U.S.C. §§ 206-207 (hereinafter “FLSA”), the Nevada Revised Statutes (hereinafter “NRS”) and
 9 common law claims. (See generally Doc. No. 1 at Exhibit “A”). In addition, Plaintiff Cohn sought
 10 relief on behalf of himself and a collective of other “similarly situated persons” pursuant to 29
 11 U.S.C. § 216. (Id. at ¶ 20). Defendants subsequently removed the case to the United States District
 12 Court for the District of Nevada on November 15, 2011, Case No. 2:11-cv-01832-JCM-NJK. (Doc.
 13 No. 1).

14 2. Plaintiff filed a Supplemental Complaint on April 19, 2012. (Doc. No. 43). The
 15 Supplemental Complaint alleged claims for: (1) unpaid overtime under the FLSA; (2) unpaid
 16 overtime under NRS § 608.018; (3) waiting-time penalties under NRS §§ 608.020, 608.030, and
 17 608.040; (4) breach of contract as third party contract beneficiaries; (5) wrongful interference with
 18 prospective economic advantage; (6) conversion, and (7) retaliation under the FLSA. (Id.).
 19 Plaintiffs’ Fourth, Fifth, and Sixth causes of action were voluntarily dismissed on January 10, 2014.
 20 (Doc. No. 121).

21 3. Defendants timely filed their Answer to Plaintiffs’ Complaint on November 28, 2011
 22 and its Answer to First Supplemental Complaint on May 3, 2012, denying that they did not fully pay
 23 Plaintiff Cohn or other “similarly situated persons” all overtime wages in violation of the FLSA,
 24 denying that it violated any provisions of the NRS, denying that it was liable for any common law
 25 claims and denying that the action was appropriately maintained as a class or collective action. (See
 26 Doc. Nos. 4 and 47).

27 4. Plaintiff Cohn sought to pursue his FLSA causes of action as a collective action on
 28 behalf of himself and a class of current and former workers employed by Defendants Ritz

1 Transportation, Inc., AWG Ambassador, LLC, Alan Waxler and Raymond Chenoweth. Plaintiffs'
2 motion seeking conditional certification of the FLSA collective action for notice purposes was
3 granted by the court. (Doc. No. 19).

4 5. After settlement discussions, the Parties have now reached an agreement to resolve
5 this action.

6 6. Based upon the understandings and assessments of each party, the Parties, acting at
7 arm's length and in good faith and with the advice of counsel, have negotiated and entered into a
8 "Confidential Settlement Agreement and Release of All Claims" ("Settlement Agreement") which
9 they believe represents a fair and reasonable settlement of Plaintiffs' action.

10 7. Pursuant to Lynn's Food Stores, Inc. v. United States of Am., 679 F.2d 1350, 1353
11 (11th Cir. 1982), the Parties have agreed to bring this Joint Motion for judicial approval to give
12 effect to Plaintiffs' release of their FLSA claims, which is material to the Settlement Agreement.
13 (See also Orquiza v. Walldesign, Inc., 2014 U.S. Dist. LEXIS 127393, 5-6 (D. Nev. Sept. 10,
14 2014)).

15 8. The Parties have submitted a Proposed Order granting their Joint Motion and
16 approving the Settlement Agreement. (See "Proposed Order Approving Settlement Agreement,"
17 attached as **Exhibit "1"**).

18 9. The Parties have also submitted a copy of the Settlement Agreement for this Court's
19 review and approval, which is attached to this Joint Motion as **Exhibit "2."** **The Parties have also**
20 **agreed that such Settlement Agreement shall be modified in the following manner:**

21 (A) David Daniels, William Simmons, Shawn Thompson and Gary Chavez (hereinafter the
22 "Non-Participating Plaintiffs") are not included as "Opt In Plaintiffs" and are not subject to the
23 Settlement Agreement or attached Proposed Order Regarding Stipulation of Dismissal with
24 Prejudice as Plaintiffs' counsel has been unable to contact these individuals regarding the settlement
25 of the above-captioned lawsuit. With regards to these four Non-Participating Plaintiffs, Plaintiffs'
26 counsel shall bring a Motion to Withdraw as counsel of record for the Non-Participating Plaintiffs
27 within 7 days of the filing of this Joint Motion for Approval of Confidential Settlement Agreement
28 and Release of All Claims and for Dismissal with Prejudice. Upon the filing of this Motion to

1 Withdraw, Defendants anticipate bringing a Motion or Countermotion to dismiss these Non-
 2 Participating Plaintiffs for their failure to participate and prosecute their claims in the above-
 3 captioned lawsuit so that the Court may issue a separate Order for dismissal of these Non-
 4 Participating Plaintiffs.

5 (B) In each place in the agreement where the number 37,311 appears the number 31,067
 6 shall be substituted.

7 10. The Parties further request that the Court retain jurisdiction over this matter and
 8 incorporate by reference the Settlement Agreement into its Order granting this Motion.

9 11. Provided the Court approves the Settlement Agreement, the Parties also stipulate to
 10 and request that the Court enter a Stipulation of Dismissal dismissing this lawsuit with prejudice.
 11 (See "Proposed Order Regarding Stipulation of Dismissal and Dismissing Lawsuit with Prejudice,"
 12 attached as **Exhibit "3"**).

13 WHEREFORE, the Parties respectfully request that this Court review and approve the
 14 Confidential Settlement Agreement and General Release, and dismiss this lawsuit with prejudice.

15
 16 Dated: October 31, 2014

Dated: October 31, 2014

17 Respectfully submitted,

Respectfully submitted,

18
 19 /s/ Leon Greenberg, Esq.

/s/ Montgomery Y. Paek, Esq.

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24 Attorneys for Plaintiffs

Attorneys for Defendants

IT IS SO ORDERED.

Dated November 24, 2014.


 UNITED STATES DISTRICT COURT JUDGE

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